

AARON CHRISTOPHER WHEELER,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
PRISON HEALTH SERVICES, INC.; JEFFREY	:	
BEARD <i>(in his official capacity on behalf of the</i>	:	No. 09-410
<i>Pennsylvania Department of Corrections); DAVID</i>	:	
DIGUGLIEMO <i>(in his official capacity on behalf of</i>	:	
<i>the State Correctional Institution at Graterford); and</i>	:	
JOHN DOES NO. 1 - 3;	:	
Defendants.	:	

AND NOW, this 1st day of September, 2010, upon consideration of defendants Beard and DiGuglielmo's motion to dismiss, the motion of Prison Health Services, Inc. and John Doe #1 (Richard Stefanic, M.D.), and plaintiff's responses thereto; following a conference at which all parties were present and heard, and for the reasons set forth in the accompanying memorandum, it is **ORDERED** that:

1. Defendants Beard and DiGuglielmo’s motion to dismiss [**paper no. 31**] is **GRANTED in part** and **DENIED in part**. It is **GRANTED** as to plaintiff’s request for compensatory damages. It is **DENIED without prejudice** to a motion for summary judgment as to the official-capacity action for injunctive relief.
2. The motion of Prison Health Services, Inc. (“PHS”) and John Doe #1 [**paper no. 32**] is **GRANTED in part** and **DENIED in part**. It is **GRANTED** as to: (a) Count I against John Doe #1; (b) Count II in its entirety; and (c) Count III against PHS and John Doe #1. Because Count II fails as a matter of law, it shall not be reasserted in a third amended complaint. The motion is **DENIED without prejudice** to a motion for summary judgment as to Count I (plaintiff’s Eighth Amendment claim) against PHS. The motion to dismiss based on the applicable statute of limitations is **DENIED without prejudice** to a motion reasserting the argument against the third amended complaint.
3. Plaintiff shall have forty-five (45) days to file a third amended complaint: (a)

correcting the caption by obtaining the names of the new secretary of the Department of Corrections and the new warden at SCI-Graterford; (b) substituting the John Doe defendants with properly named individuals; (c) addressing exhaustion of administrative remedies and the statute of limitations; and (d) specifying the nature of the requested prospective relief. During this forty-five (45) day period, plaintiff may conduct limited discovery regarding the identity of the John Doe defendants and the statute of limitations.

/s/ Norma L. Shapiro

J.